



Texas Senate Committee on Nominations

SENATOR GONZALO BARRIENTOS
CHAIRMAN

September 11, 1992

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Morales:

The Senate Committee on Nominations would like to request your legal opinion regarding the possible authority of the Texas Senate to confirm the Governor's nominees to the Texas Ethics Commission.

As you know, in November 1991 Texas voters adopted a constitutional amendment creating an eight-member Ethics Commission. Article III, Section 24a (a) of the Texas Constitution requires the Governor to appoint two Ethics Commissioners of different political persuasions from a list of ten names submitted to her from the House of Representatives and two Ethics Commissioners of different political persuasions from a list of 10 names submitted to her from the Senate. Four other members of the Ethics Commission, who are appointed by the Lieutenant Governor and the Speaker of the House of Representatives, clearly are not subject to Senate confirmation.

Even though Article III, Section 24a of the Constitution does not specifically say the governor's nominees to the Ethics Commission shall be subject to Senate confirmation, Article IV, Section 12 of the Constitution says that the appointment of any state officer by the Governor requires the advice and consent of two-thirds of the Senate.

There is a precedent for Senate confirmation of board members who are appointed by the governor from lists submitted by the legislative branch. Article 4413(32j), section 6, Vernon's Annotated Texas Statutes, requires the Governor to appoint six of the nine members of the Department of Information Resources' governing board from lists submitted by the Lieutenant Governor and the Speaker of the House of Representatives. Two of those six clearly are not subject to Senate confirmation because they are required by statute to be members of the Legislature. However, we have confirmed and rejected the other governor's nominees to this board whose appointments originated from lists submitted by the legislative branch.

We think it is fairly clear that Senate confirmation of the Governor's nominees to the Ethics Commission is required, but there is some question as to whether or not the board members of an agency that has some authority over the Senate's conduct and salary should in turn be subject to Senate review.

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Opinion Committee

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While I know you cannot answer the question of whether or not the Legislature intended to make half of the Ethics Commission subject to Senate confirmation, we need to know if the Texas Constitution requires that confirmation.

I thank you in advance for your prompt attention to this request for an Attorney General's Opinion.

Sincerely,

A handwritten signature in cursive script, reading "Gonzalo Barrientos". The signature is fluid and extends to the right with a long horizontal stroke.

Gonzalo Barrientos
Chairman

GB/trh

cc: Governor Ann Richards
Lt. Governor Bob Bullock
Speaker Gib Lewis
Members, Senate Committee on Nominations
Mr. John Steiner, Texas Ethics Commission